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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. *2013-466*

12 **KRISTINE MINANA MACKEY**
24 Waterway
13 Irvine, CA 92614

A C C U S A T I O N

14 **Registered Nurse License No. 254712**
Public Health Nurse Certification No. 32128
15 **Nurse Practitioner Certificate No. 7710**
Nurse Practitioner Furnishing Certificate
16 **No. 7710**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about August 31, 1975, the Board of Registered Nursing issued Registered
25 Nurse License Number 254712 to Kristine Minana Mackey (Respondent). The Registered Nurse
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on December 31, 2014, unless renewed.
28

3. On or about November 20, 1981, the Board of Registered Nursing issued Public Health Nurse Certification Number 32128 to Kristine Minana Mackey (Respondent). The Public Health Nurse Certification was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2014, unless renewed.

4. On or about July 18, 1995, the Board of Registered Nursing issued Nurse Practitioner Certificate Number 7710 to Kristine Minana Mackey (Respondent). The Nurse Practitioner Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2014, unless renewed.

5. On or about February 21, 1996, the Board of Registered Nursing issued Nurse Practitioner Furnishing Certificate Number 7710 to Kristine Minana Mackey (Respondent). The Nurse Practitioner Furnishing Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2014, unless renewed.

JURISDICTION

6. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

7. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

8. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

9. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

...

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or regulations adopted pursuant to it....

10. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022....

11. Code section 2725.1 states:

Notwithstanding any other provision of law, a registered nurse may dispense drugs or devices upon an order by a licensed physician and surgeon if the nurse is functioning within a licensed clinic as defined in paragraphs (1) and (2) of subdivision (a) of Section 1204 of, or within a clinic as defined in subdivision (b) or (c) of Section 1206, of the Health and Safety Code.

No clinic shall employ a registered nurse to perform dispensing duties exclusively. No registered nurse shall dispense drugs in a pharmacy, keep a pharmacy, open shop, or drugstore for the retailing of drugs or poisons. No registered nurse shall compound drugs. Dispensing of drugs by a registered nurse, except a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51 or a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, shall not include substances included in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code). Nothing in this section shall exempt a clinic from the provisions of Article 13 (commencing with Section 4180) of Chapter 9.

12. Code section 2836.1 states:

Neither this chapter nor any other provision of law shall be construed to prohibit a nurse practitioner from furnishing or ordering drugs or devices when all of the following apply:

(a) The drugs or devices are furnished or ordered by a nurse practitioner in accordance with standardized procedures or protocols developed by the

1 nurse practitioner and the supervising physician and surgeon when the drugs
2 or devices furnished or ordered are consistent with the practitioner's
educational preparation or for which clinical competency has been
established and maintained.

3 (b) The nurse practitioner is functioning pursuant to standardized
4 procedure, as defined by Section 2725, or protocol. The standardized
5 procedure or protocol shall be developed and approved by the supervising
physician and surgeon, the nurse practitioner, and the facility administrator
or the designee.

6 (c)(1) The standardized procedure or protocol covering the furnishing of
7 drugs or devices shall specify which nurse practitioners may furnish or order
8 drugs or devices, which drugs or devices may be furnished or ordered, under
9 what circumstances, the extent of physician and surgeon supervision, the
method of periodic review of the nurse practitioner's competence, including
peer review, and review of the provisions of the standardized procedure.

10 (2) In addition to the requirements in paragraph (1), for Schedule II
11 controlled substance protocols, the provision for furnishing Schedule II
controlled substances shall address the diagnosis of the illness, injury, or
condition for which the Schedule II controlled substance is to be furnished.

12 (d) The furnishing or ordering of drugs or devices by a nurse
13 practitioner occurs under physician and surgeon supervision. Physician and
14 surgeon supervision shall not be construed to require the physical presence
of the physician, but does include (1) collaboration on the development of
the standardized procedure, (2) approval of the standardized procedure, and
15 (3) availability by telephonic contact at the time of patient examination by
the nurse practitioner.

16 (e) For purposes of this section, no physician and surgeon shall
17 supervise more than four nurse practitioners at one time.

18 (f)(1) Drugs or devices furnished or ordered by a nurse practitioner may
19 include Schedule II through Schedule V controlled substances under the
California Uniform Controlled Substances Act (Division 10 (commencing
with Section 11000) of the Health and Safety Code) and shall be further
20 limited to those drugs agreed upon by the nurse practitioner and physician
and surgeon and specified in the standardized procedure.

21 (2) When Schedule II or III controlled substances, as defined in Sections
22 11055 and 11056, respectively, of the Health and Safety Code, are furnished
or ordered by a nurse practitioner, the controlled substances shall be
23 furnished or ordered in accordance with a patient-specific protocol approved
by the treating or supervising physician. A copy of the section of the nurse
24 practitioner's standardized procedure relating to controlled substances shall
be provided, upon request, to any licensed pharmacist who dispenses drugs
or devices, when there is uncertainty about the nurse practitioner furnishing
25 the order.

26 (g)(1) The board has certified in accordance with Section 2836.3 that
27 the nurse practitioner has satisfactorily completed (1) at least six month's
physician and surgeon-supervised experience in the furnishing or ordering of
28 drugs or devices and (2) a course in pharmacology covering the drugs or
devices to be furnished or ordered under this section.

1 (2) Nurse practitioners who are certified by the board and hold an active
2 furnishing number, who are authorized through standardized procedures or
3 protocols to furnish Schedule II controlled substances, and who are
4 registered with the United States Drug Enforcement Administration, shall
complete, as part of their continuing education requirements, a course
including Schedule II controlled substances based on the standards
developed by the board. The board shall establish the requirements for
satisfactory completion of this subdivision.

5 (h) Use of the term "furnishing" in this section, in health facilities
6 defined in Section 1250 of the Health and Safety Code, shall include (1) the
7 ordering of a drug or device in accordance with the standardized procedure
and (2) transmitting an order of a supervising physician and surgeon.

8 (i) "Drug order" or "order" for purposes of this section means an order
9 for medication which is dispensed to or for an ultimate user, issued by a
10 nurse practitioner as an individual practitioner, within the meaning of
11 Section 1306.02 of Title 21 of the Code of Federal Regulations.
12 Notwithstanding any other provision of law, (1) a drug order issued pursuant
13 to this section shall be treated in the same manner as a prescription of the
supervising physician; (2) all references to "prescription" in this code and
the Health and Safety Code shall include drug orders issued by nurse
practitioners; and (3) the signature of a nurse practitioner on a drug order
issued in accordance with this section shall be deemed to be the signature of
a prescriber for purposes of this code and the Health and Safety Code.

14 13. Title 16, California Code of Regulations, Section 1443 states:

15 As used in Section 2761 of the code, "incompetence" means the lack of
16 possession of or the failure to exercise that degree of learning, skill, care and
17 experience ordinarily possessed and exercised by a competent registered
nurse as described in Section 1443.5.

18 COST RECOVERY

19 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
23 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
24 included in a stipulated settlement.

25 DRUGS

26 15. Ambien, a brand name for zolpidem tartrate, is a Schedule IV controlled substance as
27 designated by Health and Safety Code section 11057(d)(32), and is a dangerous drug pursuant to
28 Business & Professions Code section 4022. Zolpidem belongs to a class of drugs called sedatives

or hypnotics and is closely related to a family of sedatives called benzodiazepines. These drugs cause sedation, muscle relaxation, act as anti-convulsants (anti-seizure), and reduce anxiety.

FACTS

16. Respondent is, and at all times alleged in this Accusation was, a Certified Nurse Practitioner employed at South Coast Pediatrics in Santa Ana, California. South Coast Pediatrics is a medical office whose patients range in age from newborn to 21 years old, although the patients who are 20 years old and older have special needs. The practice does not provide professional services to adults. The practice is owned and operated by Doctors R.E. and J.W. The medical office provides newborn examinations, sick visit checks, vaccinations, and physical examinations for school and sports participation.

17. In or about May, 2011, the Board initiated an investigation of Respondent after receiving an anonymous complaint that Respondent was writing prescriptions for family and friends and was forging physician names to obtain medication for herself. In the course of the investigation, a Controlled Substance Utilization Review and Evaluation System (hereinafter "CURES") report was obtained showing that Respondent prescribed Ambien to four adults. The original prescriptions for these patients were obtained from the dispensing pharmacies. According to the CURES report and the prescriptions, Respondent prescribed Ambien as follows:

Date issued	Date filled	Patient	DOB	Drug/ strength/quantity	RX #
3/30/09	7/22/09	Patient 1	2/16/85	Ambien 12.5 mg/30	00530314
	8/14/09	Patient 1	"	Ambien 12.5 mg/30	00530314
3/19/10	3/29/10	Patient 2	6/25/88	Ambien/ 5 mg/60	4434284
8/10/09	8/10/09	Patient 3	6/27/53	Ambien/ 6.25 mg/7	431532
4/30/10	4/30/10	Patient 4	1/10/80	Ambien/ 10 mg/20	0200628
	9/17/10	Patient 4	"	"	"

18. The prescriptions were written on South Coast Pediatrics prescription pads and bore Respondent's signatures. Respondent had her own prescription pad to write prescriptions.

1 As a Certified Nurse Practitioner at South Coast Pediatrics, Respondent was not assigned to
2 specific patients. Respondent did not see adult patients and was not permitted to prescribe
3 medication to adult patients.

4 19. M.S. of South Coast Pediatrics confirmed that Patients 1 through 4 were not patients
5 of South Coast Pediatrics and that there was no record of these patients having visited the medical
6 office.

7 20. Respondent was interviewed by the Board's investigator and was shown the
8 prescriptions for the four patients listed above. Respondent admitted that she wrote the
9 prescriptions, that Patients 1 and 2 were her nieces, that Patient 3 was her nephew and that Patient
10 4 was her boyfriend's son. Respondent stated she issued Ambien prescriptions to all of them
11 because they were having trouble sleeping because of school. Respondent stated that she saw
12 these patients at South Coast Pediatrics but that she never informed either Dr. R.E. or J.W. of
13 their visits. She did not complete a chart for the patients because she did not want them to be
14 charged for the visit. Respondent stated she did not know Ambien was a controlled substance and
15 would not have prescribed the medication to her family members if she had known.

16 21. The Standardized Procedures for Nurse Practitioners implemented by South Coast
17 Pediatrics provides that the nurse practitioner document patient care, including all drugs
18 furnished, and that the prescriptive information be documented in the patient's chart. The
19 Standardized Procedures also call for the nurse practitioner to consult with the mentoring
20 physician whenever situations arise that go beyond the intent of the Protocols or beyond the scope
21 of practice or experience of the nurse practitioner. Respondent's scope of practice as a nurse
22 practitioner at South Coast Pediatrics involves the examination, diagnosis and treatment of low
23 risk, pediatric patients. Any other patient is to be referred to Dr. J.W.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct)**

26 22. Respondent is subject to disciplinary action under Code section 2761(a) for
27 unprofessional conduct in that Respondent failed to adhere to standardized procedures and
28 protocols for nurse practitioners implemented by South Coast Pediatrics when Respondent

1 furnished drugs to four adults who were not patients of South Coast Pediatrics but were
2 Respondent's family members; when Respondent did not consult with Dr. J.W. or Dr. R.E. about
3 these patients; and, when Respondent did not document examination of these patients or that
4 drugs had been furnished to them, as more fully set forth in paragraphs 16-21 and incorporated by
5 this reference as though set forth in full.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Incompetence)**

8 23. Respondent is subject to disciplinary action under section 2761(a)(1) for
9 incompetence, as defined in title 16, California Code of Regulations section 1443, in that
10 Respondent failed to exercise that degree of learning, skill, care and experience ordinarily
11 possessed and exercised by a competent registered nurse when she failed to adhere to
12 standardized procedures and protocols for nurse practitioners implemented by South Coast
13 Pediatrics pertaining to documenting patient care and furnishing drugs, as more fully set forth in
14 paragraphs 16-21 and incorporated by this reference as though set forth in full.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct – Prescribed or Furnished Controlled Substance)**

17 24. Respondent is subject to disciplinary action under section 2762(a), in conjunction
18 with Code sections 2725.1 and 2836.1, for unprofessional conduct in that Respondent prescribed
19 or furnished a controlled substance in violation of law when she prescribed or furnished Ambien
20 to her family members in violation of the standardized procedures and protocols for nurse
21 practitioners implemented by South Coast Pediatrics, as more fully set forth in paragraphs 16-21
22 and incorporated by this reference as though set forth in full.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct – Violation of Laws)**

25 25. Respondent is subject to disciplinary action under section 2761(d) for unprofessional
26 conduct in that Respondent violated or attempted to violate, directly or indirectly, the provisions
27 or terms of the Nurse Practice Act, specifically Code sections 2725.1 and 2836.1, when she
28 prescribed or furnished Ambien to her family members in violation of the standardized

1 procedures and protocols for nurse practitioners implemented by South Coast Pediatrics, as more
2 fully set forth in paragraphs 16-21 and incorporated by this reference as though set forth in full.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 254712, issued to
7 Kristine Minana Mackey;

8 2. Revoking or suspending Public Health Nurse Certification Number 32128, issued to
9 Kristine Minana Mackey;


10 3. Revoking or suspending Nurse Practitioner Certificate Number 7710, issued to
11 Kristine Minana Mackey;

12 4. Revoking or suspending Nurse Practitioner Furnishing Certificate Number 7710 to
13 Kristine Minana Mackey;

14 5. Ordering Kristine Minana Mackey to pay the Board of Registered Nursing the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3; and,

17 6. Taking such other and further action as deemed necessary and proper.

18
19 DATED: DECEMBER 8, 2012

20 *for* 
21 LOUISE R. BAILEY, M.ED., RN
22 Executive Officer
23 Board of Registered Nursing
24 Department of Consumer Affairs
25 State of California
26 Complainant

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